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Board of Building Regulations and Standards (BBRS)
Department of Public Safety, One Ashburton Place, Boston, MA 02108
APPROVED MINUTES, October 11, 2016 at 1:10 p.m.

Richard Crowley Chair (RC)	<input checked="" type="checkbox"/> present	<input type="checkbox"/> absent
<i>Building Official of a City, open</i>	<input type="checkbox"/> present	<input type="checkbox"/> absent
Felix Zemel (FZ)	<input checked="" type="checkbox"/> present	<input type="checkbox"/> absent
John Couture (JC)	<input checked="" type="checkbox"/> present	<input type="checkbox"/> absent
Kevin Gallagher (KG)	<input checked="" type="checkbox"/> present	<input type="checkbox"/> absent
Cheryl Lavalley (CL)	<input checked="" type="checkbox"/> present	<input type="checkbox"/> absent

Kerry Dietz (KD)	<input checked="" type="checkbox"/> present	<input type="checkbox"/> absent
Peter Ostroskey (PO) ¹ /designee	<input checked="" type="checkbox"/> present	<input type="checkbox"/> absent
Michael McDowell (MM)	<input checked="" type="checkbox"/> present	<input type="checkbox"/> absent
<i>Structural Engineer, open</i>	<input type="checkbox"/> present	<input type="checkbox"/> absent
Christopher Pennie (CP)	<input type="checkbox"/> present	<input checked="" type="checkbox"/> absent

¹ Jennifer Hoyt (JH) as designee

ALSO IN ATTENDANCE Steve Carley (SC), Counsel, Elizangela Barros (EB), Tom Riley (TR).
Others in attendance listed in attached Audience Sign-In Sheet (EXHIBIT G).

General notes on format:

- Votes are noted as **Motion** by, Second by, and whether the vote was unanimous or split (if split, will list the vote in the order of: yea, nay, and abstain).
- The October 11, 2016 Agenda is listed as Exhibit A; other EXHIBITS are listed sequentially as addressed during the meeting.

BBRS MEETING

RC opens with roll call

1. Review and approval of September 13, 2016 draft meeting minutes.

The Board reviewed the 9/13/16 minutes (Exhibit B) for several minutes followed by some discussion. FZ asked if, for the LNG Advisory Committee, it was going to be the DPS

Commissioner of Public Safety or FZ that was determined to be the ex officio member / TR responded that after some discussion at the 9/13/16 meeting it was determined that the DPS Commissioner of Public Safety would be the ex officio member along w/the SFM. KG asked FZ if the 9/13/16 ductwork presentation by Conquest has become or will become part of a Training Program. FZ answered YES and that Rob Anderson is coordinating multiple trainings in the months ahead. KD noted that the posted Trainings in this matter did not provide for Training in Western MA and such was noted w/schedule action expected to address Western, MA. KG asked that Conquest's commitment to Training be captured in the subject Minutes but TR noted that such actually was captured in the body of the DRAFT Minutes and KG accepted the DRAFT language. KD was concerned that a private company might bias a Training w/product-specific aspects but FZ noted the subject Trainings are devoid of any product-specific materials and the Training materials are generic.

The DRAFT 10/11/16 Minutes were adopted as drafted.

Motion by FZ Second by MM Vote Unanimous

2. Elect a new vice-chair until January, 2017

RC moved to elect KG to Vice Chairman (VC) seconded by JH and continued discussion noting KG's considerable qualifications. JC suggested other members might also seek the Vice Chairmanship and JC then offered himself as a candidate for VC w/MM moving JC's nomination, seconded by KD.

With 2 nominees identified under separate Motions, SC opined that only one MOTION could be taken at a time and after much discussion, KD recommended that the early Motions be withdrawn and a new Motion, presenting both candidates, be offered. MM discussed how other Boards he was familiar with operated regarding the electing of Chair and Vice Chair. FZ noted that historically the BBRS had, from time to time, taken differing tacks on how and who would be selected for Vice Chair and Chair and then both RC and MM rescinded their earlier Motions / JH noted that statutorily (MGL c.143, Section 93), the positions of Chairman and Vice Chairman were annually-appointed positions / FZ further noted that under said law the Chair and Vice Chair could only serve 2 consecutive terms. RC then moved and MM seconded that both JC and KG be considered for VC. KD and CL requested that each candidate provide a brief overview of why he would make a proper VC. JC presented his position noting his long term experience in construction and as a building official gives him unique experience although JC noted that KG was eminently qualified. KG noted he has had 6 years on the BBRS, further noting that there is a new sense of comradeship and mission but acknowledged JC's experience and then withdrew his name from consideration as VC and moved the nomination of JC for Vice Chairman. MM suggested that there be a more formal approach taken to how the Chair and Vice Chair be identified and groomed for such positions. CL asked if there is a term limit for the Vice Chair and it was noted that like the Chair, the Vice Chair position is also governed by law – annual election and 2 consecutive term limit.

The Motion to elect JC as Vice Chair until January 2017, (the VC position needed to be filled for the remainder of CY 2016 due to the resignation of the previous VC, T. Perry) was then voted.

Motion by KG

Second by MM

Vote Unanimous

3. Review and approval of the BOCC Draft Meeting Minutes

- a. June 1, 2016
- b. August 3, 2016
- c. September 7, 2016
- d. October 3, 2016

FZ requested these matters be Tabled for another month as the subject meeting minutes were not ready. JC requested such DRAFT Minutes be forwarded to him and the membership when such become available for his and the membership's review and FZ noted he would see such takes place once FZ has such.

No Vote was taken but the matter was Tabled until the November 2016 monthly meeting.

4. Review and approval of Executive Session minutes for May 12, 2015 BBRS meeting.

SC provided overview noting the OML requirement that the Board vote to designate someone or to take on the responsibility of conducting the periodic determination of whether executive session minutes need to remain confidential or may be subject to public disclosure. Since the Board has a designee (RC), the OML requires the determination (remain closed to the public or open to the public) be announced at the meeting following the periodic review. RC, via vote, reviews such executive session minutes every 6 months and the subject executive session minutes of May 12, 2015 have been reviewed and RC determined that the purpose of the executive session at that time had ended thus there was no need to keep such minutes confidential.

SC noted that the subject executive session minutes would now become an Exhibit (Exhibit C) to the Board's Meeting Minutes of 10/11/16 and available upon request. FZ provided for the public an overview of said executive session minutes, noting the matter dealt w/an Official Interpretation (2014_02) regarding sheet metal work (louvers as an element of the building envelope). FZ noted that the AAG involved advised that the Official Interpretation did not take into account the authority of the Board of Examiners of Sheet Metal Workers (BESMW) and based on such guidance a decision by the BBRS was made to rescind the Official Interpretation.

FZ did note that the BBRS and the BESMW are currently striving to work together more cooperatively.

5. Consider approval of 446 81 new CSLs issued in the month of September August, 2016

FZ explained there was need of correction as the CSL count on the October 11, 2016 Agenda was inadvertently for the month of August; EB provided the correct count for the month of September at 81 new CSLs.

Motion to approve 81 new CSLs:

Motion by MM

Second by KD

Vote Unanimous

6. Review of the CSL Hearing Officer decision in the following matter:

a. Peter Ciaraldi (2016-541)

RC introduced Item 6a and SC provided the Case overview noting that Mr. Ciaraldi had appealed the Hearings Officer's written Decision # 2016_541 (Exhibit D) to the full Board and consequently the Board needed to decide if it would support the Hearings Officer's written Decision or otherwise modify same. Following review of the Decision the Board voted to support the Decision as written. FZ provided some additional discussion wrt Hardy Plank installation matters v. allegations of electrical work performed by non licensed people and recommended that the Board concentrate on the Hardy Plank issue but KD observed that this CSL and crew clearly appeared to install the main service improperly. MM, on the Hardy Plank issue alone, supported the Decision. KG asked if the Hearings Officer could come before the Board to describe his methodology in applying punitive actions and FZ indicated the Hearings Officer would be invited to the November 2016 meeting to discuss such.

Motion by KD

Second by MM

Vote Unanimous

ACTION: Invite the Hearings Officer (C. Popov) to the November 2016 Meeting to explain his methodology and rationale in the development of the Complaint Decisions he issues.

7. Review of application for a CSL based upon averaged passing score

a. Wayne Maguire

FZ provided brief overview but noted due to a lack of test paperwork, the matter was requested Tabled until the necessary documentation is received.

8. Review application for new Concrete Testing Laboratory

a. Thielsch Engineering

FZ provided brief overview but noted due to a lack of necessary paperwork, the matter was requested Tabled until the necessary documentation is received.

9. Discuss/Updates to interpretations of 780 CMR, Eighth Edition

- a. **Non-required facilities / elements – status:** FZ provided overview noting 780 CMR provides (Chapter 9) guidance for the design and installation of non required fire sprinkler systems. Again, considerable discussion ensued w/MM believing that non building permissible work is not inspected and therefore should not be discretely regulated. KG and KD argued similarly. JH asked is there any evidence / statistics to support reason for tightening up on regulations? JC noted that “matters not provided for” does provide Building Officials a regulation to address issues that historically and currently do not require permitting but FZ argued that state-wide

consistency, via interpretation, would be more desirable. TR observed that the question might be changed to ask that for non permittable structures (unattached deck < 200ft² and less than 30" above grade), should a structure (handrail and guard system or partial system) that requires life-safety performance and intended placed upon the non permittable structure, be required to be permitted? C. Meskus, Building Official, asked if the ICC has been asked and addressed this issue and JH also asked same and also noted that BBRS Official Interpretations should be specific and not generalized. FZ agreed w/JH wrt specifics v. generalized interpretation and will carry the question to the ICC. J. Kelly, ACE, MA and former Building Official argued that partial systems should be code-compliant (i.e., a partial guard and rail system should comply). JH again noted that code-enforcement is critical and for non permittable structures and systems, enforcement is difficult.

Action: FZ /DPS staff will query the ICC in this matter, seeking to determine if the ICC has a position on rail and guard systems on an otherwise non building permittable deck (deck not attached to the building; < 200ft² and regulated by the MA-amended IRC-09).

- b. **Homeowner exemption to the CSL requirements – status:** FZ provided overview and SC presented a DRAFT affidavit (Exhibit E) for Board consideration; additionally, P J Moriarty (PJM) had likewise drafted an affidavit along w/Code Change Proposal language (Exhibit F) and provided overview to the Board on his (PJM-drafted) affidavit. FZ noted DPS was still putting forward DPS's affidavit. KD asked if it was the intention that every homeowner be required to address the PJM affidavit and the answer was YES.

FZ noted that the PJM affidavit would require a Code change for enforcement purposes.. JC was concerned that implementation of the PJM affidavit would require filing information with the Registry of Deeds every time a building permit was pulled (PJM proposal). SC did not believe the PJM approach was prudent and argued the SC draft affidavit would be a reasonable first approach on striving to preclude contractors from avoiding CS Licensure. SC also noted Building Departments were free to use such an affidavit but were not being required to use such. JC noted that "home-flippers" will sign any documents but will still behave as "home flippers". FZ noted that the use of fines, in conjunction w/the DRAFT affidavit (DPS DRAFT affidavit) are available and such was reinforced by SC noting violation of 110.R5 homeowner exemption. JC argued that introduction of affidavits puts more work on the Building Official and argued that the PJM affidavit w/registry of deeds recording would put the onus on the "homeflipper". TR noted that a legitimate homeowner could be burdened to file at registry of deeds every time a building permit was pulled. FZ argued for humane consistency utilizing the less burdensome SC affidavit and KD argued the PJM affidavit could inadvertently tie property up and preclude sale. KD also argued for notarization of the DPS affidavit. KG asked for clarifying how registry of deed filing would work – JC explained that the PJM affidavit deed attachment would cause the Lender pause in that sale of the property and mortgage lending was contingent on the property being in conformance w/780 CMR requirements including true homeowner exemption requirements or the need for a recognized CSL for building permittable work. KG asked where is legal authority to allow BBRS to force registry of deed filing? D Walsh noted if tools are available then B/Os have the necessary tools via the DPS affidavit. FZ noted the PJM proposal would require a code change v. the DPS-proposed affidavit which does not require a code change.

PJM defended his affidavit arguing that the burden on B/Os is taken from B/O and placed on the contractor. PJM argued a code change is not required but the document is a recordable document wrt the registry of deeds. FZ responded that a B/O cannot require a registry of deeds recording.

After much discussion, including KD's request that a notary public sign off be added to the DPS Draft the Board determined that the notary public would not be included and the SC affidavit was then voted to be used and issued to all Building Departments for their voluntary use.

Motion by MM Second by JC Vote Unanimous

- c. **Classification of babysitting / short-term childcare facilities within health clubs and gyms, etc. – status:** FZ requested this matter be Tabled another month.

Action: Place this matter on the November 2016 BBRS Agenda.

- d. **Like-kind replacement of fire protection equipment – status:** TR reported the document is a work in progress and not ready for review.
- e. **Active Shooter Door Stopper technologies (*) – status:** FZ noted this is also a work in progress and not ready for review.

10. Discuss adoption of a property maintenance standard as part of the 9th Edition – status: FZ provided overview noting “105, 410” (State Sanitary Code) has had long-standing conflict w/certain requirements of 780 CMR thus the possibility of the adoption of a property maintenance code and in support of such possible effort, the creating of a proposed Maintenance Code Advisory Committee noting the BBRS authority for maintenance. RC supported the idea of considering the development of a coordinated property maintenance code noting that should the ICC International Property Maintenance Code be the basis for such a code that certain overly burdensome and intrusive requirements (lawn grass height, etc.) of said Code would need to be amended out. JH noted there is a maintenance standard for 527 CMR and such effort would be a large effort and should not target 9th edition incorporation. JH was also concerned about creating conflicts w/other Boards noting FDs enter by request or via requirement under emergency instances and B/Os do not have such authority but FZ noted that B/Os have such authority but agrees coordination is intended. FZ noted that under such a coordinated Property maintenance code, 780 CMR could require the back fitting of CO detection into schools per statutory authority.

KD asked who would pay such Housing Inspector salaries and FZ noted that the BBRS could create a class of property maintenance inspectors. KD asked would such be creating an unfunded mandate and FZ responded that the possible grandfathering of current Health Inspectors as special building inspectors would address such concern. KD suggested that a housing committee member (possible from CHAPPA) be part of the makeup of the proposed Maintenance Code Advisory Committee. FZ identified the intended makeup of said committee (information excerpted from the Draft 9th Edition of 780 CMR) noting it would have a maximum of 11 members, consisting of 1 member from: DPS, DPH, DHCD, DFS, a Building official, a Health Official, a residential property manager, a commercial property manager, a low income tenant representative, an architect, and a representative from Housing Court. JH continued to see this as a huge undertaking, involving, among other matters, the BBRS's authority v. that of sister agencies. KD indicated that the current housing code created great conflicts w/780 CMR and DHCD requirements and consequently supported the idea that BBRS would be the Board to evaluate/develop a draft coordinated property maintenance code.

JH noted that the current draft 105 CMR 410 document from DPH was not ready for BCCC presentation but continued to express deep concern wrt the effort required to develop such a draft code, continued to be concerned regarding unfunded mandates and did not want to risk holding up the issuance of the 9th of 780 CMR and argued for an exploratory committee first. J Nunnari (architect) believed the general effort worthwhile but shared JH's concerns wrt time, effort and impact of unfunded mandates and cautioned that organizations such as NAIOP would be expected to be very interested in any proposed regulations impacting maintenance of private buildings and structures. MM noted at least some other states only enforce their property maintenance codes during transfer/sale of said property.

After much discussion a MOTION to create the Property Maintenance Code Advisory Committee was advanced.

Motion by MM

Second by KD Vote Unanimous

Action: Begin assembling the Property Maintenance Code Advisory Committee by reaching out for the pro bono members discussed above.

11. Discuss other matters not reasonably anticipated 2 business days in advance of meeting.

RC asked the status of B/O appointing authority and FZ noted that such is a work in progress.

KD sought an update of the status of the 9th Edition of 780 CMR and SC advised that presently there was no further information.

MM asked for status on stiffening of regulations to assure better on line education programs and FZ noted that the Continuing Education Manager was working in this arena. MM asked if the Continuing Education Manager could discuss this matter w/the Board at its November 2016 meeting.

Action: Invite the Continuing Education Manager to the November 2016 BBRS Meeting to discuss on-line education developing standards.

12. Approve adjourning the meeting.

Motion by JH

Second by JC Vote Unanimous

EXHIBITS:

- A. BBRS Meeting agenda 10-11-2016
- B. BBRS Meeting Minutes 09-13-2016 (*Approved as written*)
- C. Executive Session Minutes of 05-12-15
- D. CSL Complaint Decision 2016_541
- E. DPS Draft Homeowner Exemption Affidavit
- F. PJ Moriarty Draft Homeowner Exemption Affidavit and Code Change Proposal Package
- G. Audience sign-in sheet of those in attendance at the 10-11-2016 BBRS Monthly Meeting